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Supreme Court, U.S.
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No. 99-855

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1999

ANDRE LAMONT RAY, *Petitioner*,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA, *Respondent*.

ON PETITION FOR WRIT OF CERTIORARI TO THE
THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. "Is there a 'community care-taking function' exception to the Fourth Amendment warrant requirement which permits police officers to enter a private residence without a warrant in non-emergency situations?"

2. "Does the Fourth Amendment prohibit law enforcement officers from entering a private residence without a warrant when they lack reasonable cause to believe that an emergency exists?"

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OPINION OR JUDGMENT BELOW

Petitioner Ray seeks review of the California Supreme Court's opinion in *People v. Ray*, 21 Cal.4th 464, 981 P.2d 928, 88 Cal.Rptr.2d 565 (1999) (Appendix 1 of Appendices to Petition for Writ of Certiorari) filed August 19, 1999, affirming the California Court of Appeals judgment reversing the trial court judgment suppressing the evidence in petitioner's case and dismissing the related charges.

STATEMENT OF JURISDICTION

Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONS, STATUTES OR REGULATIONS

Petitioner relies upon the Fourth Amendment to the United States Constitution.

STATEMENT OF THE CASE

On February 19, 1997, the Contra Costa County Grand Jury returned an indictment accusing Ray of one count of possession of cocaine (Cal. Health & Saf. Code § 11351), one count of possession of rock cocaine for sale (Cal. Health & Saf. Code § 11351.5), and one count of manufacturing a controlled substance (Cal. Health Saf. Code § 11379.6 (a)). (CT 123-124.[1]) It was further alleged, with respect to the possession charge, that Ray possessed more than ten kilograms of cocaine (Cal. Health & Saf. Code § 11370.4). (CT 124.)

On February 27, 1997, Ray was arraigned and entered a plea of not guilty. (CT 130.)

On March 14, 1997, Ray's defense motion to suppress, pursuant to California Penal Code section 1538.5, was heard by the trial court and granted. On the same day, the trial court dismissed all charges. (CT 180.)

On March 19, 1997, the People appealed the dismissal to the California Court of Appeal, First Appellate District. (CT 181.)

On June 10, 1998, the California Court of Appeal, filed its opinion reversing the trial court's judgment. Appendix at 36. On June 24, 1998, Ray filed a petition for rehearing in the court of appeal. On July 1, 1998, the court of appeal denied that rehearing petition. On July 20, 1998, Ray filed a petition for review. On September 23, 1998, the California Supreme Court granted Ray's petition for review. Appendix at 5. The California Supreme Court affirmed the Court of Appeal's decision finding the underlying search reasonable,

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1. "CT" refers to the clerk's transcript of the state trial court proceedings; "1538.5 RT" refers to the reporter's transcript of the suppression hearing of March 14, 1997; "PX RT" refers to the preliminary hearing which was stipulated into the record.

however, a majority of the court could not agree upon the basis for the decision.

The instant Petition for Writ of Certiorari followed.

STATEMENT OF THE FACTS

For purposes of this brief, respondent incorporates by reference the statement of facts set forth in the opinion of the California Supreme Court. Petition Appendix at 2-3.

ARGUMENT

CALIFORNIA HAS NOT ADOPTED A COMMUNITY CARE-TAKING EXCEPTION TO THE FOURTH AMENDMENT'S WARRANT REQUIREMENT

Ray urges this Court to grant his petition for a writ of certiorari to determine whether there is a "community care-taking exception" to the Fourth Amendment's warrant requirement. As he otherwise phrases the question: can police enter a home without a warrant if they do not have reasonable cause to believe that an emergency exists? His only argument for granting certiorari is that three members of the California Supreme Court answered the above stated questions affirmatively. Ray argues this puts California in conflict with this Court's precedent as well as the decisions of other states.

We urge this Court to deny the petition as California has not yet recognized a community care-taking function exception to the warrant requirement. In fact, a majority of the California Supreme Court refused to adopt or apply this doctrine to the facts at bar.

Ray does not dispute that only the lead plurality opinion, authored by Justice Brown and joined by only two other justices, relied on the community care-taking exception to uphold the officer's warrantless entry in the house. A majority of the California Supreme Court, however, the second plurality opinion, authored by Chief Justice George and a dissent by Justice Mosk, applied traditional exigent circumstance jurisprudence in evaluating the legality of the police entry. Although this majority disagreed as to whether these facts constituted an exigent circumstance, they were uniform in their application of this well-recognized doctrine.

California, thus, has not recognized any new exception to the warrant requirement. While three members of the California high court upheld the search on this new theory, an opinion that expresses views of less than a majority of the members of the court is not precedent. *Roy Supply, Inc. v. Wells Fargo Bank*, 39 Cal.App.4th 1051, 1069, 46 Cal.Rptr.2d 309 (1995). Neither is the reasoning of the plurality binding on the lower courts of California. *Id.* California is therefore not in conflict with any court. Since no conflict exists, certiorari is not appropriate.

CONCLUSION

For all of the foregoing reasons, the People of the State of California respectfully ask this Court to deny the petition for writ of certiorari.

Dated: January 26, 2000.

Respectfully submitted,

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